

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TORRELL SAXON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

13 Civ. 4966 (ER)

14 Civ. 733 (ER)

**DECLARATION OF
M. BRENT BYARS IN SUPPORT
OF PETITIONER'S MOTION
TO VACATE, SET ASIDE OR
CORRECT SENTENCE
PURSUANT TO 28 U.S.C. § 2255**

I, M. Brent Byars, declare as follows:

1. I am an attorney admitted to the practice of law in the State of New York and in this Court. I am associated with the law firm of Cravath, Swaine & Moore LLP. Benjamin Gruenstein, a partner of the firm, has been appointed pursuant to the Criminal Justice Act of to serve as counsel for Petitioner Torrell Saxon in these proceedings. I have personal knowledge of the facts set forth herein.

2. I submit this declaration in support of Petitioner's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255.

3. Pursuant to our request, Mr. Saxon's trial counsel, Amy Attias, produced to the firm a copy of her file for Mr. Saxon's case. I have reviewed the contents of the case file. Although the case file contains research concerning other arguments Mr. Saxon's trial counsel considered making on behalf of her client (for example, an annotated copy of a case relevant to whether Mr. Saxon's post-arrest statements would be admitted), it does not contain any indication that she performed

research on whether Mr. Saxon was eligible for enhanced sentencing under the Armed Career Criminal Act (“ACCA”).

4. The Government has produced recordings of calls between Mr. Saxon and Ms. Attias that occurred when Mr. Saxon was incarcerated during the proceedings on Mr. Saxon’s underlying case. The phone calls are dated between December 4, 2012, and June 18, 2013. I have listened to these phone calls. The phone calls contain extensive conversation concerning Mr. Saxon’s trial strategy and the putative benefits of the plea agreement trial counsel advised Mr. Saxon to accept. However, there is no indication in any of these recordings that trial counsel recognized or advised Mr. Saxon that he was likely ineligible for enhanced sentencing under ACCA or that she performed any research on that issue. Each of the quotations from these calls in the Supplemental Brief filed together with this Declaration is an accurate transcription of a call recorded on the date identified in the Supplemental Brief.

5. Attached hereto as Exhibit A is a true and correct copy of the Affirmation of Amy Attias dated December 9, 2013 and filed on February 10, 2014 in *United States v. Saxon*, No. 12 Cr. 320 (ER) (S.D.N.Y.).

6. Attached hereto as Exhibit B is a true and correct copy of the Plea Agreement between the United States Attorney for the Southern District of New York and Torrell Saxon dated December 21, 2012 in *United States v. Saxon*, No. 12 Cr. 320 (ER) (S.D.N.Y.).

7. Attached hereto as Exhibit C is a true and correct copy of the Affirmation of Amy Attias dated April 4, 2014, and filed on April 23, 2014, in *Saxon v. United States*, No. 14 Cv. 733 (ER) (S.D.N.Y.).

8. Attached hereto as Exhibit D is a true and correct copy of the Transcript of the Sentencing Hearing dated May 30, 2013 in *United States v. Saxon*, No. 12 Cr. 320 (ER) (S.D.N.Y.).

9. Attached hereto as Exhibit E is a true and correct copy of handwritten notes from Ms. Attias's case file dated April, 4, 2013.

10. Attached hereto as Exhibit F is a true and correct copy of the Transcript of the Conference dated April 9, 2013 in *United States v. Saxon*, 12 Cr. 320 (ER) (S.D.N.Y.).

11. Attached hereto as Exhibit G is a true and correct copy of Defendant Anthony Northington's Memorandum of Law Submitted in Support of his Pretrial Motions filed on November 14, 2011, in *United States v. Northington*, No. 11-Cr-678 (RJS) (S.D.N.Y.).

12. Attached hereto as Exhibit H is a true and correct copy of Defendant Rory Pressley's Reply Memorandum of Law in Support of Defense Motions to Suppress and to Dismiss the Indictment, filed on September 28, 2012 in *United States v. Pressley*, No. 12 Cr. 452 (PKC) (S.D.N.Y.).

13. Attached hereto as Exhibit I is a true and correct copy of Defendant Alonzo Jackson's Motion for a Pretrial Ruling that He Is Not Subject to the Sentencing Enhancements of 18 U.S.C. § 924 (e) filed on May 14, 2013 in *United States v. Alonzo Jackson*, No. 13 Cr. 142 (PAC) (S.D.N.Y.).

14. Attached hereto as Exhibit J is a true and correct copy of the Memorandum of Law in Support of Defendant's Pretrial Motions, filed November 27, 2013, in *United States v. Andre Calix*, No. 13 Cr. 582 (LAP) (S.D.N.Y.).

15. Attached hereto as Exhibit K is a true and correct copy of the letter dated May 27, 2013 from Ms. Attias to this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 3, 2015



M. Brent Byars